Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1998

MARY AND CHRIS ALOUPIS

Petitioners,

v.

JOHN JOSEPH ROOP AND CARGILL, INC.

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals For the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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Mary and Chris Aloupis
20745 Mallard Parkway
Orlando, Florida 32833
(407) 568-0088

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QUESTIONS PRESENTED

1. Did the Maryland Circuit Court of Charles County err in not granting plaintiff a new trial on a jury verdict which is so unfair and unjust that it defeats even the most noble purpose of the U.S. Constitution, which is to "establish justice"?

2. In rejecting the appellant's appeal, did the Maryland Court of Special Appeals deviate from well established precedent followed by other high state and federal courts, and using color of state law, deprive appellant of his civil and Constitutional rights?

3. In a state civil case presenting state law claims is a plaintiff allowed to remove his case to federal courts under "Federal Question Jurisdiction" upon showing that his legal and Constitutional rights are violated by the laws and prosecution proceedings of the state courts?

4. Is 28 U.S.C. § 1441 compatible with the right of equal protection of laws given to all citizens by the Fourteenth Amendment of the U.S. Constitution even though it confines the right of removal of cases from state to federal courts to defendants only.

5. Was the judgment of the United States Court of Appeals 4th Circuit correct in affirming the judgment of the U.S. District Court by considering only the Pro se plaintiff-appellant's state court claims and not the reason he is asking the federal court for relief?

LIST OF PARTIES

This case derives from the Circuit Court of Charles County, Maryland and the petitioner's are Chris Aloupis and Mary Aloupis, acting Pro se.

The respondents are John Joseph Roop and Cargill, Incorporated acting through their attorney Scott D. Goetsch of the law firm Semmes, Bowen and Semmes of Baltimore, Maryland.

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OPINIONS BELOW

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JURISDICTION

The opinion of the United States Court of Appeals for the 4th Circuit was entered November 18, 1998 (App. 1a). This Courts jurisdiction is invoked under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment XIV of the United States Constitution provides "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". Statutory Grant 28 U.S.C. § 1331 vests jurisdiction to federal courts to redress deprivation of a citizens rights secured by the Fourteenth Amendment of the Constitution of the United States. Statutory Grant 28 U.S.C. § 1343(3) vests jurisdiction to redress deprivation of civil rights under color of state law.

STATEMENT OF THE CASE

Comes now the petitioners, in the above captioned matter, Chris and Mary Aloupis, Pro se, jointly are filing a

petition for a Writ of Certiorari with the Supreme Court of the United States appealing the Order and Mandate of the United States Court of Appeals for the Fourth Circuit, dated January 6, 1999, affirming the lower courts decision order signed by the Honorable Marvin J. Garbis of the United States District Court of Maryland, dated August 27, 1998 in this matter in support therefore states as follows:

This matter derives from an automobile tort accident related case. The petitioners state that the facts in this case are as follows:

1. Chris Aloupis is a resident of Charles County, Maryland and a citizen of the State of Maryland.

2. Respondent(s) John Joseph Roop, is a resident of Frederick County and a citizen of the State of Maryland. Respondent Roop was operating a tractor trailer truck owned by respondent Cargill, Inc., on the day, time, and place of this accident.

3. Respondent Cargill, Inc., is incorporated under the laws of the State of Maryland in Frederick County in the State of Maryland. Cargill, Inc., owned the tractor-trailer truck which rear-ended petitioner.

COUNT I – NEGLIGENCE

Petitioner incorporates the allegations of Paragraphs 1-3 and further states as follows:

4. On April 8, 1992 at approximately 1:30 P.M., petitioner was operating his 1992 Toyota pick-up truck northbound on Mattawoman-Beantown Road in Charles

County, Maryland near its intersection with Council Oak Drive.

5. At the same time and place, respondent Roop was operating an International Tractor pulling a Warren Box trailer in the same direction on the same road.

6. Petitioner had stopped, wearing his seat belt with his left signal on to make a left turn onto Council Oak Drive when respondent failed to reduce speed to avoid a collision with petitioner and rear-ended his vehicle at a high rate of speed, between 45-50 miles per hour.

7. No negligence of petitioner contributed to this accident, and the respondents do not dispute liability.

8. As a result of the accident, petitioner's vehicle was severely damaged and petitioner sustained and suffered severe personal and physical injuries requiring extensive medical treatment, endured substantial pain and suffering, and economic loss, including medical expenses and further economical losses. Additionally, petitioner has suffered permanent injuries and extreme mental anguish as well as physical and emotional disorders, which continue to this date.

COUNT II – VICARIOUS LIABILITY

Petitioners incorporate the allegations of paragraphs 1-8 and further state as follows:

9. At the time and the place of the accident, respondent Roop was employed by respondent Cargill, Inc., as a driver of a tractor trailer truck owned by Cargill, Inc.

10. At the time and place of the accident, respondent Roop was acting within the scope of his employment as a driver for Cargill, Inc.

COUNT III – LOSS OF CONSORTIUM

Petitioners incorporate the allegations of Paragraphs 1-10 and further state as follows:

11. Petitioner Mary Aloupis was, at the time of the accident, and still is the lawful wife of petitioner Chris Aloupis.

12. The negligent conduct of the respondent Roop more specifically described above caused injury to the marital relationship of the petitioners, including loss of society, affection, assistance, companionship, and loss of sexual relations.

THE TRIAL

The petitioner in this injury matter filed suit on September 12, 1994 in the Circuit Court for Charles County, Maryland. The case was assigned to the Honorable Judge Steven Chappelle for litigation. After two postponements by the Defense Counsel and mediation attempt failed, which produced no results, the Court scheduled the trial for litigation from July 21-24, 1997.

13. The prosecution presented oral and documented testimony provided by three Board Certified physicians, accepted by the Court for their expertise in their field of medicine, a neurological surgeon (Dr. Najmaldin O. Karim). A psychiatrist (Dr. Karl H. Keller), and an otolaryngology

(ENT) (Dr. Dennis Fitzgerald) physicians. Also, a report on the findings from a deposition provided by an orthopedic surgeon (Dr. Bijan Ghovanlou) including and not limited to tests performed on the petitioner by various hospitals and clinics in order to support the allegations in this matter.

14. Where after three days of trial, the Judge instructed the jury before retiring for a verdict to deliberate the out-come of this case, for them to rule only on evidence presented at the trial. After three hours of deliberation, the jury's findings and verdict was as follows: the petitioner was awarded no compensation for medical bills (which have accumulated to more than $50,000.00); no compensation for loss of wages, past, present, or future; no compensation for loss of marital relationship (loss of consortium). The only award was $2,000.00 for pain and suffering and no economic losses. The petitioner in this case was never charged with any contributory negligence as stated before. The Judge questioned this inadequate award in light of the proven damages, but later denied the plaintiff's Request for New Trial.

15. Counsel for petitioner filed a Motion for New Trial pursuant to Maryland Rule 2-533. Motion was denied by the Court.

16. The petitioner clearly states that the jury did not abide by the Judge's instructions and the verdict they rendered on July 24, 1997 was biased, prejudicial, discriminatory, and unconstitutional and without foundation or merit, and the petitioner strongly believes that it was due to the petitioner's ethnic background (of Greek descent).

17. That, after the verdict was rendered by the jury, and Motion for New Trial by petitioner's attorney was

rejected by the Court, faced with severe economic losses, out of work, and having lost his contracting business for over five years, feared also loosing his Civil and Constitutional rights, the petitioner was compelled to proceed without counsel on Pro se basis in order to continue this case.

18. A letter was sent to the judge and a Motion for Reconsideration was filed with the court, but to no avail.

19. Within the thirty day statute, the petitioner inquired through the Court and was informed to file a petition to the Court of Special Appeals of Maryland, and the Court stated, because of the nature of the case deriving from a jury trial, the appeal must be filed with the Court of Special Appeals and not to the Court of Appeals according to their instructions.

20. On October 14, 1997, a petition was filed with the Court of Special Appeals for review of plaintiff's PETITION FOR NEW TRIAL. The plaintiff states that the verdict was "biased, prejudiced, discriminated and unconstitutional".

21. After filing the plaintiff's PETITION FOR NEW TRIAL on October 14, 1997, the following sequence of events transpired:

a December 17, 1997 – Maryland Court of Special Appeals Order – To proceed without a pre-hearing conference.

b February 19, 1998 – Orders the filing of the brief by March 31, 1998 and schedules oral arguments on the first and second week of June 1998.

c March 24, 1998 – Court Notice verifying that oral arguments will be scheduled June 1, 4, or 16, 1998.

d April 21, 1998 – Plaintiff received a notice from the court indicating that there would be no oral arguments, rather the case would be judged on brief only.

22. Rejected by the Court of Special Appeals of Maryland, stating points of Maryland Law and technicalities, the Court let stand the lower court judgment. Without any recourse, petitioners filed a petition on August 3, 1998 with the United States District Court for the District of Maryland, claiming Federal jurisdiction intervention demand. The Court requested from them to file a Show Cause Order, stating Jurisdiction and Diversity of Citizenship under 28 U.S.C. § 1332 service of process was withheld pending further order.

23. On August 24, 1998, a reply to Show Cause Order was filed with the Court. On August 27, 1998, the case was dismissed by the Court for Lack of Jurisdiction.

24. On September 15, 1998, a Notice of Appeal was filed with the United States Court of Appeals for the Fourth Circuit appealing the order dated August 27, 1998 set forth by the Honorable Marvin J. Garbis on grounds and in reference to Jurisdiction and Diversity of Citizenship.

25. The Court stated that the issues and arguments petitioners were presenting the Court would consider the matter for review, and order the petitioners to submit an informal brief. On October 2, 1998, a brief was filed with the Court. On November 18, 1998, Notice of Judgment was entered by the Court affirming the lower Courts decisions. Petitioners filed with the Court, for a Rehearing of the

Judgment. On December 29, 1998, a mandate and Order of the Court denying the petitioners a rehearing was issued.

26. The petitioners allege that their constitutional rights were violated, and specifically Rights of Due Process and Equal Protection of Laws given to them by the Fourteenth Amendment of the U.S. Constitution. Although the petitioners were not very specific when they brought this question up for a MOTION FOR RECONSIDERATION to the Circuit Court of Charles County, Maryland, where he stated that the verdict of that Court was "Biased, prejudiced, discriminating, and unconstitutional". (App. 41a)

27. The petitioner also repeats this statement of unconstitutionality in his petition for a new trial in the Court of Special Appeals of Maryland but this issue was ignored, partially due to petitioner's difficulty in framing this issue properly as well as communicating on prosecuting his appeal.

28. The petitioners are now able to be more specific and in this petition will show just how their rights of due process and equal protection, of law, were violated by the State courts of Maryland. In addition, the petitioners will also show that the decision of the U.S. District Court and subsequent U.S. Court of Appeals of the Fourth Circuit were premature and that the petitioners strongly believe that the Federal Courts have jurisdiction under 28 U.S.C. § 1331, even though they failed to state a meritorious cause of action when they filed their claim to the U.S. District Court of Maryland.

29. In this petition, the petitioners ask the U.S. Supreme Court to review the judgments of the U.S. Court of Appeals for the Fourth Circuit (App. 1a), the U.S. District

Court for the District of Maryland (App. 5a), the Court of Special Appeals of Maryland (App. 7a), the Circuit Court of Charles County Maryland (App 20a) and the entire case presented herein.

Along with the judgments and associated opinions, the petitioner also includes under "Petitioner's Comments" why he believes these rulings violated his rights as a citizen.

The petitioner also states that in rejecting his appeal, the Maryland Court of Special Appeals made an improper conclusion from the following reference which conflicts with opinions clearly stated by other appellate courts and that is: "The decision to grant a new trial is left to the sound discretion of the trial court, and the courts exercise of that discretion will generally not be disturbed on appeal." *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md 51, 57 (1992). Also from *Buck* "holding that denial of a new trial motion would not be disturbed in the absence of "extraordinary" or "compelling" circumstances".

While this appears to be in line with other decisions, the petitioner claims that this Courts interpretation of what is "normal", "extraordinary" and "compelling" is not in line with other well stated opinions such as found in *Kennedy v. Missouri*, PAC RR 778 S.W. 2d 552 (Tex. Ct. App. 1989):

> "Writ of error denied, A jury must award something for every element of damage from the injuries sustained. While the amount of damages is ordinarily left to the discretion of the jury, they cannot ignore undisputed evidence and arbitrarily deny compensation for a proven element of damages based on

> speculation that the jury overcompensated on other elements."

This is also evident in *Thompson v. Cooper*, 551 So. 2d 1030 (Ala 1989), *Brannon v. Webster*, 562 So. 2d 1337 (Ala. Civ App 1990) or *DeMoss v. Brown Cab Co. Inc.*, 218 Iowa 77, 254 N.W. 17 (1934): "Failure to award damages for medical bills, where required represents a reversible error".

Now, all these opinions say that if a person is injured and has undisputed evidence such as medical bills, a jury denial of any recovery for those bills is a reversible error.

The way the *Buck* decision is interpreted by the Court of Appeals of Maryland is in opposition to all other opinions or precedent, and if looked at in this way, this reference can be used, as was used in this case, to deny justice merely by proclaiming that awarding no compensatory damages for undisputed medical bills does not meet the standard of being "extraordinary" or "compelling" which would make no sense at all.

Now, since this opinion of the Maryland Court of Special Appeals represents the opinion of the highest court in the State of Maryland (The Court of Appeals), and since this decision and accompanying state laws enumerated by the Honorable Judge Harrell J. are such as to deny justice and to violate the appellant's civil and Constitutional rights, the appellant had no choice but to seek relief in the federal courts.

As a final note, the petitioner strongly believes that the defense made an additional reversible error by bringing

into evidence the plaintiff's finances (although cleverly), see Appendix I under "Petitioner's Comments" (App. 118a)

REASONS FOR GRANTING THE WRIT

Forty to fifty thousand citizens are killed on the nation's highways every year. It has been estimated that for every person killed in such accidents, two to three people suffer personal injury of some sort, varying from the very minor to the very serious. A great number of law firms are engaged in personal injury and property damage cases. Other sources of personal injury of course are in addition to automobile injuries, which substantially increase the number of personal injury actions taken throughout the United States.

The great numbers of citizens who are involved in personal injury cases certainly have an interest in the laws pertaining to their case. The remaining public-at-large, who in the future may be affected by personal injury laws, also have a great interest in these matters as well.

One may now wonder, what does all this have to do with federal law? After all personal injury, except in diversity cases, is purely a state law matter and claims brought under personal injury are considered state law claims. This, of course, is true, however, when the state laws pertaining to such cases are such as to violate citizens civil and constitutional rights then that is another matter altogether and should be of considerable federal interest.

In the United States, when a citizen is injured by the negligence of others, he has a legal (civil) right to obtain compensation and as a basic rule the following authorities are sited: in regards to compensatory damages as found in

Keell v. Banach, 624 So. 2d 1022 (Ala. 1993) and *Haydel v. Hercules Transp. Inc.*, 654 So. 2d 418 (La.Ct. App. 1995):

> "The basic rule of tort compensation is that the plaintiff should be put in the position that he would have been in absent the defendant's negligence."

On the matter of the amount of the award, it is recognized that the amount of compensatory damages awarded has traditionally been committed to the discretion of the "fact finder". However, legislatures in reaction to a perceived problem in the size of compensatory awards have enacted various provisions to control compensatory damage verdicts. These statutes include caps on compensatory awards, as well as specific means for reducing the amounts any defendant may be required to pay the successful plaintiff.

It can easily be seen by the above that legislators have concluded that the "fact finder" does not always properly equate the "facts" with the award and that passion and prejudice play a role and sometimes a major role in an award.

The plaintiff here, (the Plaintiff-Appellant in the Maryland Courts) tells the Court of Special Appeals of Maryland, by using an example (App. 43a) that a high jury award made previously in Maryland was substantially reduced by more than 90% by the courts for being excessive. The plaintiff then implies, should not the same principle also apply in a case where the award is grossly inadequate? And isn't it just as proper to say that passion or prejudice is present in this award as well?

The laws of the State of Maryland, however, seem to be saying that while a high award will be reduced, and is considered an "extraordinary" or "compelling" reason to change the jury verdict an extremely low award does not meet the same standards and will not be altered and in this case will be left to the discretion of the "fact finder" and furthermore, the state courts of Maryland do not consider such low awards as either an "extraordinary" or "compelling" reason to change the jury verdict. This judgment, however, is in opposition to the opinions of other high state and federal courts; which clearly state that such an award is illegal and represents a reversible error.

After receiving the judgment of the Court of Special Appeals of Maryland and noting all the opinions of the Court of Appeals of Maryland (which is the highest court of state) and also noting the fact that the Court of Special Appeals had dispensed with oral arguments in his case, denying him his day in court and instead relying solely on his brief, (which he readily admits was not up to legal standards since he was acting Pro se), the petitioner realizing that his civil rights as well as his constitutional rights were violated by state law felt that he had no choice but to seek relief in the federal courts.

The following reference is given here relating to Due Process:

TESTS OF ADEQUACY

The Supreme Court reversed ruling that the State Court had denied the plaintiff due process in the "primary" sense of an opportunity to be heard and to defend it substantive right

> Opportunity to be heard 50 S. Ct. at 454, 281 U.S. at 681 (per Brandeis, J.)

The petitioner states in this petition that he switched from the state courts to the federal courts without exhausting the state court remedies simply because under the laws of the State of Maryland he could not possibly protect his rights as a citizen and especially under his circumstances (acting Pro se).

> "Removal of cases from state courts to federal courts is acknowledged mode of protecting rights guaranteed under Federal Constitution." *Virginia v. Rives*, (1880) 100 U.S. 313, 25 L Ed 667

Both in the U.S. District Court and the U.S. Court of Appeals the petitioner, not being an attorney, failed to make a good case for himself on the matter of jurisdiction and since his case appears to be only a case which presents state law claims his case was dismissed for lack of jurisdiction. The petitioner here tells us that he presented his case to the federal courts as it unfolded in the state courts with the hope that the federal judges would determine by the actions of the state court proceedings whether they had jurisdiction.

In this petition, the petitioner will not use the same arguments used in the lower courts and for justification offers the following reference: *Dewey v. Des Moines*, (1899) 173 U.S. 193, 43L Ed 665, 19 S Ct. 379 "Parties are not confined to same arguments which were advanced in courts below upon federal question there discussed."

In this petition, the petitioner also asks the Supreme Court to clarify and review a statute namely: 28 U.S.C.§

1441 which confines the removal of cases from state courts to federal courts to defendants only, in order to determine if it is compatible with the Fourteenth Amendment equal protection clause. The petitioner here notes that every citizen seeking damages is a plaintiff and he believes that this statute is very detrimental to all citizens who have been injured by someone else's negligence.

In addition, the petitioner will ask the Supreme Court to determine whether other factors besides the plaintiffs original complaint, such as his grievances, can be used to determine removeability. These questions are especially important to citizens who although their original complaint presents state law claims their grievances may well raise important federal questions.

Because the important issues raised in this petition would be of great benefit and interest to the public, the petitioner feels that this case merits review.

Certiorari should be granted in order:

I. **To determine whether the Circuit Court of Charles County Maryland erred in not granting the plaintiff a new trial.**

The Circuit Court for Charles County denied plaintiff's Motion for New Trial September 18, 1997 (App. 20a)

Plaintiff's counsel filed Motion for New Trial (App. 23a). Plaintiff first reason given for a new trial states:

1. "The plaintiffs were prejudiced by the jurors consideration during its deliberations matters to in evidence during the trial of this case."

Plaintiff's second reason given for a new trial states:

2. The award of the jury was inadequate in light of the proven damages at trial. Even though defendant admitted that some injury occurred and in fact that treatment was reasonable, necessary and causally related to the accident, the jury gave no award for past medical expenses.

The plaintiff, acting Pro se, also filed a MOTION FOR RECONSIDERATION claiming that the verdict was "biased, prejudiced, discriminated and unconstitutional". [Federal Question Raised for first time on motion to set aside judgment.] (See App. 41a)

> NOTE: Under 28 U.S.C. § 1257, the following opinion is given: "Federal Question raised first time on motion to set aside judgment was in time." *Manley v. Park*, (1903) 187 U.S. 547, 47 L Ed 296

Here the petitioner admits he did not know the "proper" way to raise a federal question, however, he knew that such a verdict was so unfair and unjust that it violated his constitutional rights, as a citizen.

Under 28 U.S.C. § 1257, the manner of Raising Federal Question, the following reference is given: "No particular form of words or phrases is necessary to comply with requirement that federal right be specially set up or

claimed." *Dewey v. Des Moines*, (1899) 173 U.S. 193, 43 L Ed 665 19 S Ct 379.

The inadequacy of the verdict: the jury gave the plaintiff for an uncontroverted injury and medical bills totaling $50,000.00 dollars, all proper in all respects, no compensatory damages. (App. 110a) describes the uncontroverted injury (App. 107a) defense witness response to injury.

The following references apply in this case: "Failure to award damages for medical bills, where required represents a reversible error." *DeMoss v. Brown Cab Co. Inc.*, 218 Iowa 77, 254 N.W. 17 (1934); *Kennedy v. Missouri*, Pac RR778 S.W. 2d 552 (Tex. Ct. Apop, 1989); *Thompson v. Cooper*, 551 So. 2d 1030 (Ala. 1989); *Brannon v. Webster*, 562 So. 2d 1337 (Ala. Civ App 1990).

By definition: Reversible error – error "affecting plaintiff's legal rights and obligations which if uncorrected would result in a miscarriage of justice"; synonymous with prejudicial error.

The error was not corrected by the Court of Charles County and it resulted in a miscarriage of justice for the plaintiff when he applied to the Maryland Court of Special Appeals where he once again raises a federal question.

In his PETITION FOR NEW TRIAL the plaintiff once again tells the court that the verdict rendered on July 24, 1997 was "biased, prejudicial, discriminating and unconstitutional" and raising the question a second time. (App. 48a)

Note that the "PETITION" was filed prior to the plaintiff's brief to the Maryland Court of Special Appeals.

In APPENDIX E (App. 21a), the petitioner gives the "Basis for the Decision of the Maryland Circuit Court of Charles County" which is based on two motions namely:

1. PLAINTIFF'S MOTION FOR A NEW TRIAL, (App. 23a)

2. DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR NEW TRIAL, (App. 27a)

To both of these MOTIONS, the petitioner under "Petitioner's Comments" ... provides an analysis of the two motions. Special attention is given to the difference between Maryland law sited by the defense counsel and the petitioner's references.

In the "DEFENDANT'S RESPONSE" ... the defendant, under INADEQUACY OF THE AWARD, (App. 30a) tells us that: "In Maryland, the question of whether a verdict is either excessive or inadequate is one for the trial court, exercising its sound discretion."

Under the "PETITIONER'S COMMENT REGARDING DEFENDANT'S RESPONSE" ... the petitioner provides overwhelming authority which tells us that a jury does not have carte-blanche and can not arbitrarily deny compensatory damages for proven expenses. [App. 33a]

The Maryland opinions then, although may appear to have the authority of law, in reality they can be used to deny peoples legal rights, as they have done in this particular case,

since they tell us that a jury is free to deny citizens, even their constitutional rights, without due process of law which is just wrong. On the other hand, if a state uses one set of opinions to deny citizens civil rights and another set to protect other citizens that is also wrong as well.

The petitioner here alleges that if the jury award happened to be excessive, the Maryland courts would use another aspect of these opinions and reduce the amount awarded. This, however, is not fair and just and does not meet the standards of due process of law.

In concluding this section, the petitioner would like to say that an action which was taken by the Maryland courts against the plaintiff with the apparent authority of law is actually in contravention of law, and the name most commonly used for this is "color of state law". The petitioner's civil rights then have been violated under color of state law.

Under "PETITIONER'S COMMENTS REGARDING DEFENDANTS RESPONSE TO PLAINTIFF'S MOTION FOR NEW TRIAL", (App. 32a), the petitioner lists proper authority to substantiate his conclusion.

II. **To determine whether the Maryland state laws applied to personal injury cases and which appear to be in conflict with other well established state and federal laws, violate citizens civil and constitutional rights.**

The opinion of the Court of Special Appeals of Maryland is given in APPENDIX C.

In APPENDIX F, the petitioner gives the "Basis for the Decision of the Court of Special Appeals of Maryland".

1. Plaintiff's PETITION FOR NEW TRIAL (App. 46a)

2. Petitioner's Comments Regarding Appellee's Brief Submitted to the Court of Special Appeals of Maryland. [Not Submitted herein] (App. 50a)

3. Petitioner's Comments Regarding Decision of the Court of Special Appeals of Maryland (App. 55a)

Essentially, the appellee's brief tells the courts that the appellant is not a very good lawyer and his petition should be turned down because he failed to make a good case and that Maryland law clearly states that if one makes those mistakes on his brief, he cannot be considered for relief. Also, that Maryland law states that the jury verdict is not to be disturbed but only on "extra-ordinary" and "compelling" reasons. He then implies that this is not one of those cases. The Court of Special Appeals mirrors the appellee's counsel's arguments and also tells the appellant that the court cannot give his brief any consideration due to the serious mistakes he has made. The Honorable Judge also produces state references, which show that the high courts of Maryland do not alter jury verdicts in civil cases.

The appellant, however, feels that there was ample evidence there to alter the verdict and that the fact that the court denied him his day in court by not allowing him to give oral arguments and to point out facts from the trial which supported his case, denied him, especially when the court knew that he was acting Pro se, the opportunity to be heard and to defend himself. (App. 103a)

Since the ruling of the Court of Special Appeals of Maryland was the main factor in the appellant's decision to remove his case from the state courts and since the appellant strongly believes that the decision of the Maryland courts violates not only his civil rights but also his constitutional rights, the petitioner will now show that his rights under the Fourteenth Amendment of the U.S. Constitution have been violated.

As shown earlier, by using references of *DeMoss v. Brown Cab Co.Inc.; Kennedy v. Missouri; Thompson v. Cooper* and *Brennon v. Webster* which makes it clear that failure to reverse this judgment results in a miscarriage of justice and justifying the petitioner's contentions that his Constitutional rights have been violated. The only thing that needs to be shown is how the Fourteenth Amendment applies to this situation.

Now, the Fourteenth Amendment tells us "nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

In the case of due process of law, we note the following opinion:

> "Fourteenth Amendment to Constitution of United States requires that state action shall be consistent with fundamental principles of liberty and justice which lie at basis of all our civil and political institutions." *Herbert v. Louisiana*, (1926) 272 U.S. 312, 71 L Ed 270, 47 S Ct. 103, 48 ALR 1102.

> "Under Fourteenth Amendment "due process" emphasizes fairness between state and individual dealing with state, regardless of how other individuals in same situation may be treated". *Ross v. Moffitt*, (1974) 417 U.S. 600, 41 L Ed 2d 341, 945 Ct. 2437.
>
> "Concepts of "equal protection of laws" and "due process of law", although not always interchangeable are not mutually exclusive, discrimination may be so unjustifiable as to be violative of due process". *Bolling v. Sharpe*, (1954) 347 U.S. 497, 98 L Ed 884, 745 Ct. 693, 53; *Ohio Ops*, 331, Supp op 349 U.S. 294, 99 L Ed 1083, 75 S Ct. 753, 57 Ohio Ops 253, 71 Ohio L Abs584.

These opinions tell us that there is a relation between "equal protection" and "due process".

Under equal protection, the following opinions apply:

> "Equal protection of laws means subjection to equal laws applying alike toall in same situation." *Southern R. Co. v. Greene*, (1910) 216 US 400, 54 L Ed 536, 30 S Ct 287.

Also

> "Equal protection of laws requires equal operation of laws upon all persons in like circumstances." *Maxwell v. Bugbee*, (1919) 250 U.S. 525, 63 L Ed 1124, 40 S Ct. 2.

Now the plaintiff's circumstances in the Circuit Court of Maryland were that he was there to recover for injuries sustained in an accident due to the negligence of the

Defendant. In order to determine the extent of these injuries and following the doctor's advice, he incurred medical bills. Now all legal opinion tells us that such a person, regardless of who he is, should get compensated at minimum for these medical bills and if not it is a reversible error on the part of the court as pointed out by the references provided herein. (App. 34a)

Now is the petitioner supposed to believe that everyone in the State of Maryland who is seeking recovery for medical bills which were determined by expert testimony to be proper, necessary and causally related to the accident and were never objected to by the defense or the court gets the same treatment as the plaintiff? And, furthermore, do other plaintiffs receive no compensatory damages for injuries, such as a rotator cuff tear, which was never controverted by the defense witness and which was diagnosed with absolute certainty? (App. 110a)

Now according to the Maryland courts, and using state law to justify it, such a verdict which clearly violates a citizens civil and constitutional rights does not represent an "extraordinary" or "compelling" reason to alter the verdict. The only problem with this, however, is that this decision violently clashes with the decision of *Herbert v. Louisiana* offered here which tells us that state action must be consistent with the fundamental principles of justice. The plaintiff-appellant then has clearly shown that his Constitutional rights of due process and equal protection of laws under the Fourteenth Amendment have been violated – the Honorable Judge Harrel J's opinion not withstanding.

In APPENDIX F under "Petitioner's Comments regarding Decision of the Court of Special Appeals of Maryland" (App. 55a) the petitioner gives a slightly more

extensive explanation for the reasons he requested federal intervention.

III. **To determine whether citizens can remove their cases from state to federal courts under "Federal Question Jurisdiction" upon showing that the state laws applied to their case, either by their terms or the manner of their enforcement violate their civil and constitutional rights.**

The plaintiff filed a Petition to the U.S. District Court – "Federal Jurisdiction Intervention Demand". (App. 63a) In this petition, the plaintiff tells the court the following:

a Describes his state court case.

b Tells the court he was awarded an inadequate amount in view of his injuries and proven damages.

c Claims that the Court of Special Appeals first scheduled oral arguments for his appeal and later changed their minds and judged his case only on brief.

d By refusing him oral arguments, he contends it violated his civil rights and deprived him of due process of law under the First and Fourteenth Amendments [he was at least partly right there].

e The plaintiff then describes his state court case.

f Asks that his case be tried in the federal district court.

The Honorable Judge Marvin J. Garbis of the U.S. District Court for the District of Maryland responded with a SHOW CAUSE ORDER. In this order, the Honorable Judge asks the plaintiff to show why the case should not be dismissed for lack of jurisdiction by filing a statement of facts, legal authority to show that jurisdiction exists.

The Honorable Judge asks for three things to prevent the dismissal:

a Show that jurisdiction exists.

b Why it should not be dismissed due to the fact that it was already adjudicated in state court.

c Explain the expiration of the limitations to file the suit.

In the matter of jurisdiction, the petitioner would like to offer the following arguments:

It is well known that for purposes of removal, the court first looks at the plaintiff's complaint to see whether a federal question is presented. The plaintiff in his complaint states only state law claims. The question, of course, is why is he coming to federal courts? The main reason, of course, people remove their cases from state courts is to protect their constitutional rights. Now whom are they going to protect their rights from? It most certainly is not from the defendant in the case of the plaintiff, or in this case from the plaintiff in the case of the defendant. Mostly, then it is from state action through the judicial, legislative or executive branches of state government. Now the plaintiff has shown that the laws of the State of Maryland when applied to his case results in violating his constitutional rights. His grievance, or his

desire to remove his case from the state courts has nothing whatever to do with his state law case rather it has to do with the prosecution of his case by the state courts. Here we note that at least one court has held that removal is proper when a plaintiff claims a wrongful prosecution action by the state as in *Sweeney v. Abramovitz*, D.C. Conn. 1978 449 Supp. 213 (Newman J.). Also, (Courts "must look to substance of plaintiff's grievance" to determine whether federal question is presented.) *Wilkinson v. U.S. D.C. N.C.* 1989 724 F. Supp. 1200.

Earlier, the petitioner showed that the plaintiff's constitutional rights under the Fourteenth Amendment were violated (Pg. 19) under "color of state law" so that the courts would have jurisdiction under 28 U.S.C. § 1343(3) or 28 U.S.C. § 1331.

"Under color of state law requirement of 28 U.S.C. § 1343 may be treated as equivalent of state action requirement of Fourteenth Amendment and 28 U.S.C. § 1331." *Schlein v. Milford Hospital Inc.*, (1977, CA2 Conn) 561 F2d 427. "28 U.S.C. § 1343(3) applies only when plaintiff has been deprived under color of state law of right secured by Constitution;" *Powell v. Workmen's Compensation Bd.*, (1964 CA2 NY) 327 F2d 131.

The plaintiff in his Petition for Federal Intervention (App. 65a) refers to "the flaw of law". Now what does this mean? Here the plaintiff tells us that when his case was presented to the Court of Special Appeals of Maryland, it had been denied a new trial by the lower court so that when the higher court applied Maryland law to his case it resulted in a violation of his Fourteenth Amendment rights. Even though the plaintiff told the courts that they were violating his rights, they went on and applied the Maryland laws

anyway. The plaintiff now wonders, is this a federal question?

> "Decision enforcing state statute over objection that to apply statute to facts of case would violate the 14t[h] Amendment of the Constitution of United States presented Federal Question." *Fiske v. Kansas*, (1927) 274 U.S. 380, 71 L Ed 1108, 47 S Ct. 655.

Now if it is determined that a federal question has been presented, then the matter of diversity of citizenship, a concern so ably raised by the Honorable Judge Garbis should have no bearing on the matter since diversity citizenship was not essential to exercise of Federal Question jurisdiction. *Ames v. Kansas*, (1884) 111 U.S. 449, 28 L Ed 482, 4 S Ct.

The prior adjudication matter raised by the Honorable Judge can be explained as follows:

> the plaintiff in his state court civil case did not know in advance that his federal rights would be violated by the state courts. The only possible way he could have known that is by knowing in advance the court verdicts. Since the plaintiff did not take his case to the highest court of Maryland and removed his case without exhausting state remedies, he does not feel that his case was fully adjudicated. [App. 91a] gives removal references.

After reading the opinion of the Court of Special Appeals of Maryland and not wanting to lose his rights, the appellant felt that he had no choice but to seek protection in

the U.S. District Court. The following reference with respect to this matter is provided here:

> "Determining the proper timing of removal pursuant to Section 1441a has created some difficulties for the federal courts. At least one court of appeals has held that there is no federal subject matter jurisdiction, let alone removal jurisdiction." "Under that view, removal can not occur until the administrative process has been completed." *Wujick v. Dale & Dale, Inc.*, C.A. 3d 1994, 43 F.3d 790; *National Union Fire Ins. Co. v. City Savs.*, F.S.B. C.A. 3d 1994, 28 F.3d 376

In the matter of the expiration of the limitations to file the suit, the plaintiff can only say that he met all the statutes of limitations in the state of Maryland and broke no state rules in litigating his case. The defendant in this case played a big role in delaying the bringing of this case to trial. Here the petitioner would like to offer the following reference:

> "A federal court cannot dismiss an action that was timely filed in a state court according to state rules." *Mitchell v. Joseph's Supermarkets, Inc.*, D.C. Pa 1989, 712 F. Supp. 59

In APPENDIX G in "Petitioner's Comments", the petitioner under "Conclusion and Legal Authority" gives removal authority for switching from state courts to federal courts under 28 U.S.C. § 1331. (App. 91a)

IV. **To determine whether 28 U.S.C. § 1441 is compatible with the Fourteenth Amendment's equal protection clause.**

The Fourteenth Amendment refers to: "deny to any person within its jurisdiction the equal protection of the laws." Now as it is normally interpreted, the Fourteenth Amendment deals with state laws and state actions in dealing with citizens. Now does this same principle apply to federal laws as well and do federal laws have to give citizens equal protection as well? According to the following reference:

> "Removal of cases from state courts to federal courts is acknowledged mode of protecting rights guaranteed under Federal Constitution." *Virginia v. Rives*, (1880) 100 U.S. 313, 25 L Ed 667.

Grant 28 U.S.C. § 1441 tells us that the right of removal is confined to defendants only. It seems here that while defendants are offered federal protection from unconstitutional state laws, plaintiffs are not. In the area of personal injury, every citizen who files a state law claim for damages is a plaintiff and apparently can be treated in any way by state laws and he/she cannot remove their case to federal courts. This, of course, does not mean that the plaintiffs do not have other options. The Honorable Judge Garbis tells the plaintiff that since he is not suing the Court of Special Appeals of Maryland, and is suing the defendants, there does not appear to be any basis for federal jurisdiction other than diversity of citizenship. The Honorable Judge also tells the plaintiff that there would also not be any basis for a suit against the Court of Special Appeals since its decision could have been appealed to the higher court. According to this view then the lower courts can do anything

they want and they are not liable for their actions and that citizens deprivation of rights under 42 U.S.C. § 1983 would not apply to them until perhaps all state courts have been exhausted.

A statute then, which allows defendants only to switch courts and not plaintiffs, seems a little unfair and its implications certainly need to be considered and reviewed.

According to the Honorable Judge Garbis, then the plaintiff has lost his rights in the state courts but has no case against them and the federal courts have no jurisdiction. In essence, this case has no solution.

V. **To determine whether the judgments of the Federal District Court and the United States Court of Appeals 4th Circuit were correct in rejecting the Pro se appellant's appeal without fully considering the merits of his grievance.**

The plaintiff tells the federal courts that his constitutional rights have been violated by the state courts and he is asking the federal courts to allow him to have his case tried in the federal courts. On the other hand, the federal courts tell the plaintiff that he lacks diversity of citizenship and he has also failed to substantiate jurisdiction and the Honorable Judge also believes that none exists. To this, the petitioner would like to make some relevant comments, which may be helpful.

Diversity of citizenship is supposed to correct a prejudice which is "perceived" to exist between a citizen of one state and the courts of another state. Now this prejudice which is "supposed" to exist, has been found through numerous studies, to be rather insignificant compared to

other prejudices, such as race prejudice, which exist and are readily measurable and which are much more significant. The American Law Institute recognized that "Regrettably, prejudice may take a number of different forms but diversity jurisdiction has no bearing on most of them." The Institute went on to note that "it is more appropriate, however, to consider the risk of prejudice not as a separate problem but rather as one aspect of the possible shortcomings of state justice."

To a large degree, we can also extend this to cases, which involve federal questions in that in this area as well, the state courts are suspect or perceived to be biased against federal laws. This may, of course, be true to a certain degree, but aren't all judges, state and federal alike, supposed to uphold the Constitution of the United States? Most certainly.

The plaintiff appellant then asks the federal courts that if citizens who have diversity citizenship and those who can "raise a federal question" can have their cases judged in the federal courts on the basis of a "perceived" prejudice, whose existence is to a large measure fictitious, why can he not seek protection in the federal courts if he can show, with absolute certainty, that he was prejudiced and stripped of his constitutional rights by the state courts?

In trying to protect his constitutional rights, how can a citizen determine in advance of removing his case from state courts, if his case "arises under the Constitution and laws of the United States" when great Supreme Court Justices have been pondering this very question for over one hundred years?

In the event it is determined that the federal courts do not have jurisdiction it is hoped that the Supreme Court will review this case as a state court case; since this court has the authority to review all cases wherein constitutional and civil rights have been denied.

> Decision dismissing case for want of jurisdiction was reviewed on certiorari. *Kingman & Co. v. Western Mfg. Co.*, (1898) 170 U.S. 675, 42 L Ed 1192, 18 S Ct. 786

In closing, the petitioner would like to say that when the judgment of a state court violates a citizens federal rights then a citizen has personal interest and may petition the Supreme Court of the United States for relief.

Under 28 U.S.C. § 1257, the following opinion is stated:

> "Those who seek to bring in review in Supreme Court judgment of state court must have personal as distinguished from official, interest in relief sought and federal right alleged to be denied by judgment of state court" *Smith v. Indiana*, (1903) 191 U.S. 138, L Ed 125, 245 Ct. 51

> Also, "Supreme Court's power to review state judgments is to correct wrong judgments " ... *Herb v. Pitcairn*, (1945) 324 U.S. 117, 89 L Ed 789, 65 S Ct. 459

Due to the large number of citizens throughout the United States who are now, and will be in the future, similarly situated as the petitioner and since many states,

such as the State of Maryland, use personal injury laws which enable state courts to deny citizens their civil and constitutional rights without due process of law [which dictates fairness and justice] the petitioner prays that the Supreme Court of the United States review the questions and judgments presented herein and remand this case, whose wrong judgment was initially made by the Circuit Court of Charles County Maryland.

CONCLUSION

For the reasons sited in this petition, the writ of certiorari should be granted.

Respectfully submitted,

Chris Aloupis